

REFERENCE TITLE: local development fees; schools; exclusion

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1156

Introduced by
Senator Gray L

AN ACT

AMENDING SECTIONS 9-463.05, 9-500.18 AND 11-1102, ARIZONA REVISED STATUTES;
RELATING TO LOCAL DEVELOPMENT FEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-463.05, Arizona Revised Statutes, is amended to
3 read:

4 9-463.05. Development fees: imposition by cities and towns:
5 infrastructure improvements plan: annual report:
6 limitation on actions: definition

7 A. A municipality may assess development fees to offset costs to the
8 municipality associated with providing necessary public services to a
9 development, including the costs of infrastructure, improvements, real
10 property, engineering and architectural services, financing, other capital
11 costs and associated appurtenances, equipment, vehicles, furnishings and
12 other personalty. DEVELOPMENT FEES SHALL NOT BE ASSESSED FOR ANY COSTS
13 ASSOCIATED WITH SCHOOL DISTRICT OR CHARTER SCHOOL CONSTRUCTION OR
14 APPURTENANCES, INCLUDING STREETS AND WATER AND SEWER UTILITY FUNCTIONS,
15 EXCEPT FOR COSTS THAT ARE DIRECTLY RELATED TO THE PHYSICAL CONNECTION OF THE
16 SCHOOL FACILITY TO THE PUBLIC UTILITY SERVICE.

17 B. Development fees assessed by a municipality under this section are
18 subject to the following requirements:

19 1. Development fees shall result in a beneficial use to the
20 development.

21 2. Monies received from development fees assessed pursuant to this
22 section shall be placed in a separate fund and accounted for separately and
23 may only be used for the purposes authorized by this section. Monies
24 received from a development fee identified in an infrastructure improvements
25 plan adopted or amended pursuant to subsection D of this section shall be
26 used to provide the same category of necessary public service for which the
27 development fee was assessed. Interest earned on monies in the separate fund
28 shall be credited to the fund.

29 3. The schedule for payment of fees shall be provided by the
30 municipality. The municipality shall provide a credit toward the payment of
31 a development fee for the required dedication of public sites, improvements
32 and other necessary public services included in the infrastructure
33 improvements plan and for which a development fee is assessed, to the extent
34 the public sites, improvements and necessary public services are provided by
35 the developer. The developer of residential dwelling units shall be required
36 to pay development fees when construction permits for the dwelling units are
37 issued, or at a later time if specified in a development agreement pursuant
38 to section 9-500.05. If a development agreement provides for fees to be paid
39 at a time later than the issuance of construction permits, the deferred fees
40 shall be paid no later than fifteen days after the issuance of a certificate
41 of occupancy. The development agreement shall provide for the value of any
42 deferred fees to be supported by appropriate security, including a surety
43 bond, letter of credit or cash bond.

44 4. The amount of any development fees assessed pursuant to this
45 section must bear a reasonable relationship to the burden imposed upon the

1 municipality to provide additional necessary public services to the
 2 development. The municipality, in determining the extent of the burden
 3 imposed by the development, shall consider, among other things, the
 4 contribution made or to be made in the future in cash or by taxes, fees or
 5 assessments by the property owner towards the capital costs of the necessary
 6 public service covered by the development fee.

7 5. If development fees are assessed by a municipality, such fees shall
 8 be assessed in a nondiscriminatory manner.

9 6. In determining and assessing a development fee applying to land in
 10 a community facilities district established under title 48, chapter 4,
 11 article 6, the municipality shall take into account all public infrastructure
 12 provided by the district and capital costs paid by the district for necessary
 13 public services and shall not assess a portion of the development fee based
 14 on the infrastructure or costs.

15 C. A municipality shall give at least sixty days' advance notice of
 16 intention to assess a new or modified development fee and shall release to
 17 the public a written report that identifies the methodology for calculating
 18 the amount of the development fee, explains the relationship between the
 19 development fee and the infrastructure improvements plan, includes
 20 documentation that supports the assessment of a new or modified development
 21 fee and identifies any index or indices to be used for automatic adjustment
 22 of the development fee pursuant to subsection F of this section and the
 23 timing of those adjustments. The municipality shall conduct a public hearing
 24 on the proposed new or modified development fee at any time after the
 25 expiration of the sixty day notice of intention to assess a new or modified
 26 development fee and at least thirty days prior to the scheduled date of
 27 adoption of the new or modified fee by the governing body. A development fee
 28 assessed pursuant to this section shall not be effective until seventy-five
 29 days after its formal adoption by the governing body of the municipality.
 30 Nothing in this subsection shall affect any development fee adopted prior to
 31 July 24, 1982.

32 D. Before the assessment of a new or modified development fee, the
 33 governing body of the municipality shall adopt or amend an infrastructure
 34 improvements plan. The municipality shall conduct a public hearing on the
 35 infrastructure improvements plan at least thirty days before the adoption or
 36 amendment of the plan. The municipality shall release the plan to the
 37 public, make available to the public the documents used to prepare the plan
 38 and provide public notice at least sixty days before the public hearing,
 39 subject to the following:

40 1. An infrastructure improvements plan may be adopted concurrently
 41 with the report required by subsection C of this section, and the
 42 municipality may provide for and schedule the notices and hearings required
 43 by this subsection together with the notices and hearings required by
 44 subsection C of this section.

2. A municipality may amend an infrastructure improvements plan without a public hearing if the amendment addresses only elements of necessary public services that are included in the existing infrastructure improvements plan. The municipality shall provide public notice of those amendments at least fourteen days in advance of their effective date.

E. For each necessary public service that is the subject of a development fee, the infrastructure improvements plan shall:

1. Estimate future necessary public services that will be required as a result of new development and the basis for the estimate.

2. Forecast the costs of infrastructure, improvements, real property, financing, other capital costs and associated appurtenances, equipment, vehicles, furnishings and other personalty that will be associated with meeting those future needs for necessary public services and estimate the time required to finance and provide the necessary public services.

F. A municipality may automatically adjust a development fee on an annual basis without a public hearing if the adjustment is based on a nationally recognized index applicable to the cost of the necessary public service that is the subject of the development fee and the adjustment mechanism is identified in the report required by subsection C of this section. The municipality shall provide public notice of those adjustments at least thirty days in advance of their effective date.

G. Each municipality that assesses development fees shall submit an annual report accounting for the collection and use of the fees. The annual report shall include the following:

1. The amount assessed by the municipality for each type of development fee.

2. The balance of each fund maintained for each type of development fee assessed as of the beginning and end of the fiscal year.

3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.

4. The amount of development fee monies used to repay:

(a) Bonds issued by the municipality to pay the cost of a capital improvement project that is the subject of a development fee assessment.

(b) Monies advanced by the municipality from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment.

5. The amount of development fee monies spent on each capital improvement project that is the subject of a development fee assessment and the physical location of each capital improvement project.

6. The amount of development fee monies spent for each purpose other than a capital improvement project that is the subject of a development fee assessment.

H. Within ninety days following the end of each fiscal year, each municipality shall submit a copy of the annual report to the city clerk.

Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.

I. A municipality that fails to file the report required by this section shall not collect development fees until the report is filed.

J. Any action to collect a development fee shall be commenced within two years after the obligation to pay the fee accrues.

K. For the purposes of this section, "infrastructure improvements plan" means one or more written plans that individually or collectively identify each public service that is proposed to be the subject of a development fee and otherwise complies with the requirements of this section, and may be the municipality's capital improvements plan.

Sec. 2. Section 9-500.18, Arizona Revised Statutes, is amended to read:

9-500.18. School district construction fees; prohibition

Notwithstanding any other law, a city or town shall not assess or collect any fees or costs from a school district or charter school for fees pursuant to section 9-463.05, ~~-. This prohibition does not include fees assessed or collected for streets and water and sewer utility functions~~ EXCEPT FOR COSTS THAT ARE DIRECTLY RELATED TO THE PHYSICAL CONNECTION OF THE SCHOOL FACILITY TO THE PUBLIC UTILITY SERVICE.

Sec. 3. Section 11-1102, Arizona Revised Statutes, is amended to read:

11-1102. County development fees; annual report

A. If a county has adopted a capital improvements plan, the county may assess development fees within the covered planning area in order to offset the capital costs for water, sewer, streets, parks and public safety facilities determined by the plan to be necessary for public services provided by the county to a development in the planning area. DEVELOPMENT FEES SHALL NOT BE ASSESSED AGAINST A SCHOOL DISTRICT OR CHARTER SCHOOL FOR ANY COSTS ASSOCIATED WITH SCHOOL DISTRICT OR CHARTER SCHOOL CONSTRUCTION OR APPURTENANCES, INCLUDING STREETS AND WATER AND SEWER UTILITY FUNCTIONS, EXCEPT FOR COSTS THAT ARE DIRECTLY RELATED TO THE PHYSICAL CONNECTION OF THE SCHOOL FACILITY TO THE PUBLIC UTILITY SERVICE.

B. Development fees assessed under this section are subject to the following requirements:

1. Development fees shall result in a beneficial use to the development.

2. Monies received from development fees shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Interest earned on monies in the separate fund shall be credited to the fund.

3. The county shall prescribe the schedule for paying the development fees. The county shall provide a credit toward the payment of the fee for the required dedication of public sites and improvements provided by the developer for which that fee is assessed. The developer of residential

1 dwelling units shall be required to pay the fees when construction permits
2 for the dwelling units are issued.

3 4. The amount of any development fees must bear a reasonable
4 relationship to the burden of capital costs imposed on the county to provide
5 additional necessary public services to the development. In determining the
6 extent of the burden imposed by the development, the county shall consider,
7 among other things, the contribution made or to be made in the future in cash
8 by taxes, fees or assessments by the property owner toward the capital costs
9 of the necessary public service covered by the development fee.

10 5. Development fees shall be assessed in a nondiscriminatory manner.

11 6. In determining and assessing a development fee applying to land in
12 a community facilities district established under title 48, chapter 4,
13 article 6, the county shall take into account all public infrastructure
14 provided by the district and capital costs paid by the district for necessary
15 public services and shall not assess a portion of the development fee based
16 on the infrastructure or costs.

17 C. Before assessing or increasing a development fee, the county shall:

18 1. Give at least one hundred twenty days' advance notice of intention
19 to assess a new or increased development fee.

20 2. Release to the public a written report including all documentation
21 that supports the assessment of a new or increased development fee.

22 3. Conduct a public hearing on the proposed new or increased
23 development fee at any time after the expiration of the one hundred twenty
24 day notice of intention to assess a new or increased development fee and at
25 least fourteen days before the scheduled date of adoption of the new or
26 increased fee.

27 D. A development fee assessed pursuant to this section is not
28 effective for at least ninety days after its formal adoption by the board of
29 supervisors.

30 E. Each county that assesses development fees shall submit an annual
31 report accounting for the collection and use of the fees. The annual report
32 shall include the following:

33 1. The amount assessed by the county for each type of development fee.

34 2. The balance of each fund maintained for each type of development
35 fee assessed as of the beginning and end of the fiscal year.

36 3. The amount of interest or other earnings on the monies in each fund
37 as of the end of the fiscal year.

38 4. The amount of development fee monies used to repay:

39 (a) Bonds issued by the county to pay the cost of a capital
40 improvement project that is the subject of a development fee assessment.

41 (b) Monies advanced by the county from funds other than the funds
42 established for development fees in order to pay the cost of a capital
43 improvement project that is the subject of a development fee assessment.

1 5. The amount of development fee monies spent on each capital
2 improvement project that is the subject of a development fee assessment and
3 the physical location of each capital improvement project.

4 6. The amount of development fee monies spent for each purpose other
5 than a capital improvement project that is the subject of a development fee
6 assessment.

7 F. Within ninety days following the end of each fiscal year, each
8 county shall submit a copy of the annual report to the clerk of the board of
9 supervisors. Copies shall be made available to the public on request. The
10 annual report may contain financial information that has not been audited.

11 G. A county that fails to file the report required by this section
12 shall not collect development fees until the report is filed.

13 H. This section does not affect any development fee adopted before May
14 18, 2000.